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ABSTRACT

The relationship between scores on a typical bar exam and the ability to practice law was investigated with 485 applicants who took the bar exam and a 2-day performance test involving basic oral and written legal tasks. These tasks consisted of simulated cases; each participant functioned as the attorney for the plantiff in one case and as the attorney for the defendant in another case. The oral task performances were videotaped for later evaluation. The results indicated that parallel forms of psychometrically sound performance tests of important lawyering skills can be constructed, administered under standardized and secure test conditions, and scored reliably. The findings also suggest that the skills and abilities measured by the performance tests were similar but not identical to those measured by the regular bar exam. (Author/BW)

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RELATIONSHIP OF BAR EXAMINATIONS TO PERFORMANCE TESTS OF LAWYERING SKILLS

Stephen P. Klein

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Relationship of Bar Examinations to Performance Tests of Lawyering Skills

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The relationship between scores on a typical bar exam and the ability to practice law was investigated with 485 applicants who took the bar exam and a two day performance test involving basic oral and written legal tasks. Results indicated the two types of measures assessed similar but not identical skills.

Relationship of Bar Examinations to Performance Tests of Lawyering Skills

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BACKGROUND

Most bar examinations consist of a nationally administered 200 item multiple choice test, called the Multistate Bar Examination (MBE), and several state developed essay questions. Both the MBE and essay assess an applicant to the bar's knowledge of the law and the ability to analyze legal problems. The essay further measures an applicant's ability to identify legal issues and express ideas in a "lawyer like" fashion.

State bar examinations have been criticized for measuring only a few of the important skills and abilities that are needed for the practice of law. For instance, a typical bar exam question provides all the facts that are material to a case and then asks the applicant to determine how the case should be resolved. The exam does not assess whether the applicant knew what questions to ask in order to obtain these facts. This is comparable to measuring a physician's diagnostic ability on the basis of his/her skill in interpreting test results without ever assessing the physician's judgment in knowing which diagnostic tests to order. Some of the other skills that are important for legal practice that are not tested directly by the traditional bar exam include the ability to interview clients, examine a witness, conduct legal research, and negotiate a settlement.

State bar examinations also have been criticized for their disproportionate negative impact on minority groups. In California, for instance, the percentage of Anglos that pass is about twice as great as the

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percentage of Blacks that pass. Although the differences in passing rates among groups parallels their relative performance levels in law school, it has been argued that these differences would be substantially reduced if the exam measured practical (as distinct from academic) legal skills.

PURPOSE

The foregoing considerations led to an investigation of the following issues:

- o Is it feasible to construct psychometrically sound and valid measures of clinical (practice oriented) legal skills that can be administered under standardized testing conditions?
- o To what degree are essay and MBE scores correlated with scores on clinical skills measures?
- o Are scores on clinical skills tests related to an applicant's legal training and experience?
- o Would the use of clinical skills tests on a bar examination narrow the difference in passing rates among racial/ethnic groups?

PROCEDURES

The foregoing questions were investigated by having applicants to the bar take a battery of tests administered via an Assessment Center (AC). The major features of the AC were: (1) it operated for two weeks beginning shortly after the regular bar examination; (2) each enrollee participated for two days at one of two sites; (3) six different sets of tasks (called problems) were used to ensure test security; (4) in three problems, participants functioned as the attorney for the plaintiff in a simulated case while in the other three problems, participants functioned as the counsel for the defendant on a different case; (5) each participant took

one plaintiff and one defendant problem; (6) all three problems of a given type were based on the same detailed test plan; and (7) each problem took about 6 hours to complete and contained several written and oral tasks.

The tasks were developed, pilot tested, and revised by a team composed of practicing attorneys, clinical law professors, and a psychometrican. Specially trained actors played the roles of clients and witnesses for the oral tasks. Oral task performances were videotaped for later evaluation.

A strong desire to participate and do well in the AC was achieved by advising applicants that a high score in the AC would substantially improve their chances of passing the regular bar examination. Over 4,000 of the 7,439 applicants taking the July 1980 bar exam in California requested to participate in the AC. A sample of 500 applicants was selected from this group on the basis of several factors including racial/ethnic background, sex, law school type, and amount of prior clinical experience.

RESULTS

Analyses of the data on the 485 participants completing the AC indicated:

- o A participant's score was not affected by: the particular combination of problems taken; the order in which they were taken; warm-up effects; test site; possible variations in how the actors played their roles; or whether the problems were taken at the beginning, middle, or end of the two week testing program.

- o The pattern of correlations among tasks on one problem were almost identical to the pattern of correlations among tasks on another problem of the same type. This finding and others indicated that the test (and scoring guide) development teams succeeded in constructing parallel forms for each problem type.

- o The attorneys that graded the AC tasks generally agreed with one another in the scores that should be assigned to an applicant (as indicated by an analysis of variance). Interevaluator agreement was higher on the written tasks than on the oral tasks.

- o The written tasks tended to load on one factor and the oral tasks on another (orthogonal) factor. The average correlation among the written tasks (r = .23) was higher than the average correlation among the oral tasks (r = .16). Problem type did not emerge as a factor (there was a .93 correlation between problem types after correcting for attenuation)

- o Applicants with prior clinical experience had statistically significantly higher AC scores than applicants without such experience even after controlling for differences in mean bar exam scores among experience groups. The pattern of correlations between types of prior experience and types of AC scores further supported the validity of the AC tests.

- o AC oral and written scores were correlated with each other. They also were correlated with scores on the essay and MBE portions of the regular bar examination. After correcting for attenuation, the correlation between the oral and written total scores (r = .73) was higher than it was between either of these scores and bar exam essay or MBE scores.

- o The differences in average score among racial/ethnic groups on both parts of the regular bar exam generally paralleled the differences among these groups on the AC. This was especially true on the AC's written tasks. Racial/ethnic group accounted for only a very small percentage of the systematic variance in either AC or bar scores.

- o The inclusion of AC type tasks on the bar exam would make a small but noticeable change in who passed versus failed; i.e., adding AC type tasks would result in some applicants going from a pass to a fail status while the reverse would be true for other applicants.

- o Responses to a post AC questionnaire indicated that participants felt the AC was a far better test of their ability to practice law than was either section of the regular bar examination.

DISCUSSION AND IMPLICATIONS

The foregoing findings indicate that parallel forms of psychometrically sound performance tests of important lawyering skills can be constructed, administered under standardized and secure test conditions, and scored reliably. The findings also suggest that the skills and abilities measured by the AC were similar but not identical to those measured by the regular bar exam. After correcting for attenuation, the correlation between the AC and regular bar exam ($r = .72$) was about the same as it was between the essay and MBE ($r = .78$). Thus, adding AC type tasks to a bar exam would result in a small but systematic change in who passed versus failed.

The amount of change would, of course, depend upon how much weight was placed on AC tasks in making pass/fail decisions. However, even if a great deal of weight were given to the AC type tasks, it would not significantly increase or decrease the large difference in passing rates that currently exists among racial/ethnic groups on the bar exam.

Adding a practical skills component to the bar exam probably would substantially increase the number of law school students taking courses that were specifically directed toward developing their clinical legal skills. Adding AC tasks also might improve attitudes toward the efficacy of the exam on the part of the legal profession, the public, and the applicants that take it. Several states and the National Conference of Bar Examiners are therefore now considering changing their bar examinations.